

June 9, 2011

Marlene Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554



RE: Notice of Oral *Ex Parte* Communication  
Docket No. 07-42

Dear Ms. Dortch:

This notice is submitted in compliance with Section 1.1206(b) of the Commission's Rules.

On June 7, 2011, Andrew Jay Schwartzman, Chrystiane Pereira, and Elizabeth Ruiz of Media Access Project met with Dave Grimaldi, Chief of Staff and Media Legal Advisor to Commissioner Clyburn regarding Docket No. 07-42.

Mr. Schwartzman reviewed the history of the Commission's enforcement of the program carriage provisions of Section 616 of the 1992 Cable Act, noting that the statute was grounded in express findings that cable operators had a pattern of favoring affiliated programming. He noted that the fact that no complainant has successfully prosecuted a program carriage complaint suggests that FCC enforcement has not fulfilled the Congressional objective of creating a more open platform for independent programming. Mr. Schwartzman next made brief mention of claims that enhanced enforcement of Section 616 raises First Amendment questions. Under the *Turner* case, he noted, cable operators are entitled only to limited First Amendment protection, and the U.S. Court of Appeals for the D.C. Circuit rejected claims that the viewpoint neutral requirements of Section 616 violate the First Amendment.

Mr. Schwartzman then addressed arguments that adoption of a standstill requirement under Section 616 without additional public comment would violate the Administrative Procedure Act. Mr. Schwartzman explained that the applicable legal standard is whether a regulatory action is a "logical outgrowth" of the agency's proposal. The Commission clearly asked parties in this proceeding to address the problems associated with program carriage procedures, including problems associated with retaliation against complainants.

Finally Mr. Schwartzman briefly argued that existing complaint standards place too high a burden on complainants because the *prima facie* complaint standard has been interpreted as requiring a higher level of proof than complainants can easily establish before obtaining discovery.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew Jay Schwartzman".

Andrew Jay Schwartzman  
Senior Vice President and Policy Director

cc. Dave Grimaldi